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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**SUIT NO.1279 OF 1987**

The Sangli Bank Ltd. ).. Plaintiff

Versus

M.R. Choudhari & Co. and others ).. Defendants

Mr.K.H. Modi with Ms.Pratibha Mehta i/b.Little & Co. for the Plaintiff.

None present for the Defendants.

**CORAM : SMT. NISHITA MHATRE, J.**

**DATED : 29TH MARCH 2006**

**P.C.:**

. The present Suit has been filed by the Plaintiff Bank claiming an amount of Rs.1,26,120.47 together with interest at the rate of 20% per annum jointly and severally from the Defendants.

2. Defendant No.4 has expired. However, according to the learned Counsel for the Plaintiff, despite the best efforts made by the Plaintiff to ascertain the legal heirs of Defendant No.4, the Plaintiff Bank has been unable to find out their names. A letter written to the Advocate for the Defendants was replied by the Advocate for the Defendants intimating that he was unable to furnish the names of the heirs of Defendant No.4. The learned Counsel for the Plaintiff submits that under Order 20 Rule 4 of the Civil Procedure Code,

decree can be passed against Defendant No.4 as well, because despite the best efforts made, the Plaintiff Bank has been unable to bring on record the names of the legal heirs of deceased Defendant No.4. An affidavit of Vasant N. Mankar, Branch Manager of the Plaintiff Bank, is placed on record to indicate the efforts made by the Plaintiff Bank to ascertain the names of the legal heirs of the deceased Defendant No.4. The Plaintiff Bank has also produced the replies received from the Advocate for the Defendants. Affidavit taken on record and marked "X" for identification.

3. Defendant No.1 is a partnership firm of which Defendant Nos.2 and 3 were the partners. Defendant No.4 was the guarantor of the loan. Defendant No.1 was a enjoying cash credit facility with the Plaintiff Bank. Defendant Nos.2 and 3 executed four documents, namely, Demand Promissory Note for Rs.1,00,000/-, Letter of Continuing Security for Rs.1,00,000/-, Letter of lien and sef-off and Agreement of Pledge of goods to secure the said Crash Credit Facility. Defendant No.4 has executed the Deed of Letter of Guarantee on 3rd March 1982. Despite the Cash Credit facility, Defendant No.1 also enjoyed Bill Discounting facility known as Documentary Bill Purchase facility against which the Defendant Nos.2 and 3 had executed another Promissory Note for Rs.2,00,000/-. Defendant No.4 was the

guarantor who has executed the guarantee on 3rd March 1982. It appears that 12 Bills of Exchange which were purchased or negotiated by the Plaintiff for consideration of Defendant No.1 having sold its goods to the respective customers were accepted or honoured. Thereafter, it appears that the Defendants failed and neglected to repay the amount of Rs.2,444.77 towards the Cast Credit facility and Rs.1,11,562.85 towards the Documentary Bill Purchase facility. It is for this reason that the present Suit has been filed.

4. The only defence taken by the Defendants in their Written Statement is that they were made to sign blank documents and, therefore, were not aware that they were required to repay the amounts within the stipulated time.

5. Nobody appears for the Defendants though served. The Plaintiff Bank has filed an affidavit by way of examination in chief of V.N. Mankar, Branch Manager, of the Plaintiff Bank. Compilation of the original documents have also been filed. Affidavit by way of examination in chief and the documents bear out the pleadings in the Plaint. In my view, therefore, decree must follow.

6. Suit decreed in terms of prayer clause (a) with

interest payable at the rate of 20% till the filing of the Suit and at the rate of 6% from the date of filing of the Suit till payment.